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Supreme Court of the United States.

October Term, 1906.

No. 257.

HENRY E. FRANKENBERG COMPANY,
Petitioner,

vs.

THE UNITED STATES.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

APPENDIX TO BRIEF FOR THE PETITIONER.

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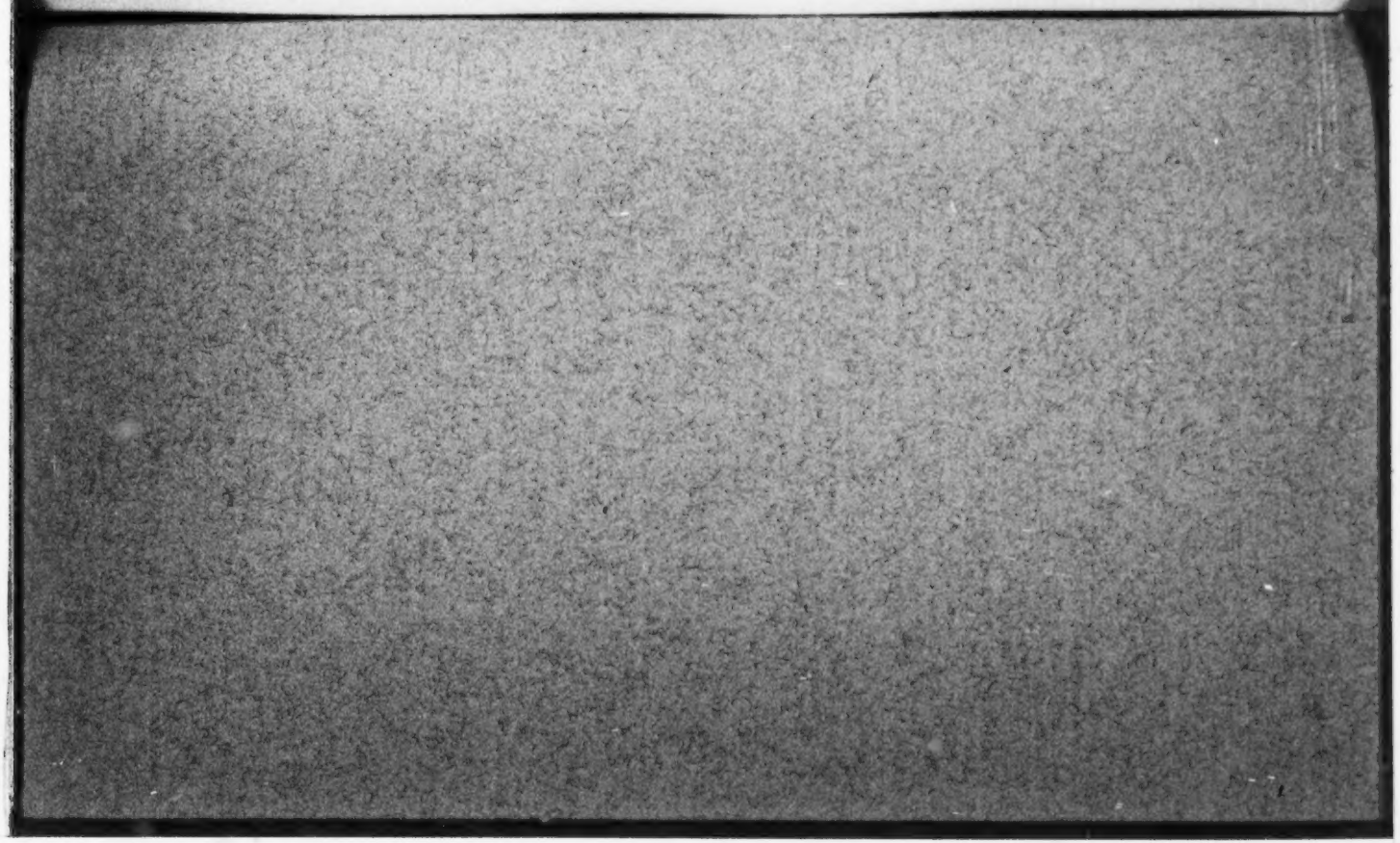

APPENDIX.

Return of Further Evidence.

IN THE CIRCUIT COURT OF THE UNITED STATES OF AMERICA,

FOR THE NORTHERN DISTRICT OF ILLINOIS—NORTHERN DIVISION.

In the Matter

of

The Appeal of T. BUETTNER & Co., from a decision of the Board of U. S. General Appraisers at New York, dated June 23, 1903.

The undersigned, Byron S. Waite, a member of the Board of U. S. General Appraisers, at New York, begs leave to report that in pursuance of the order of this Court, dated September 9, 1903, directing him to take and return to the Court such further evidence as should be offered by the Collector of Customs or the importers in this case, was present at the office of the United States Attorney for the Northern District of Illinois, on October 1, 1903, at 2 o'clock, P. M., and that there appeared before him Albert H. Washburne, counsel for the Treasury Department of the United States, in be-

half of the said Collector, and William Brace for T. Buettner & Co., the importers in this case, and that certain witnesses were produced before him, who, being duly sworn, testified as follows:

Mr. Washburne: Counsel for the Government admits that the merchandise in suit is metal beads composed of steel, temporarily strung on cheap cotton threads for convenience in handling.

E. T. BUETTNER, a witness produced on the part of the appellant, having first been duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. Give your full name? A. E. T. Buettner.

Q. Where do you live Mr. Buettner? A. Chicago.

Q. What is your business? A. Importer.

Q. Of what? A. Fancy goods, raw material, linens.

Q. Do you import beads? A. Yes, sir.

Q. Are you a member of the firm of T. Buettner & Co.? A. Yes, sir.

Q. Are you familiar with the importation which has been the matter of this controversy? A. Yes, sir.

Q. It is admitted that the importation consists of steel beads strung upon cheap cotton thread. Will you please state the purpose for which they are so strung?

Mr. Washburne: If he knows.

The Commissioner: Do you know why they are so strung? Answer yes or no.

The Witness: Yes, sir.

Mr. Brace: Now answer my question.

A. Why, for convenience's sake in handling the goods.

Q. In any other respect except handling? A. No.

Q. Have you a sample of the beads in question? A. Yes, sir.

(Witness produces same which is marked Exhibit A and is hereto annexed.)

Q. How are beads put up in this form commercially designated.

Mr. Washburne: Objected to on the ground that it is not shown so far that the articles have any commercial designation.

The Commissioner: Have you asked him?

Q. Have they a commercial designation in this form? A. Yes, sir.

Q. What is it?

Mr. Washburne: That is objected to; the witness has not been qualified to answer any questions as to commercial designation.

The Commissioner: It is my opinion at the present time that question might not be competent.

Q. How were they designated at or about the time of the importation?

Mr. Washburne: Counsel for the Government objects, on the ground that there is so far no evidence that the witness has dealt in the articles in suit in wholesale quantities; and on the further ground that there is no testimony that they have any general designation throughout the United States.

The Commissioner: I think the first ground stated is good.

Q. How long have you been an importer and dealer in these goods? A. Eleven years.

Q. Are you familiar with the goods in question and their commercial designation throughout the United States? A. Yes, sir.

Q. You have bought and sold them for eleven years? A. Yes, sir.

Q. And they have a fixed commercial designation? A. Yes, sir.

Q. What is it? A. Steel beads, unstrung.

The Commissioner: Steel beads, unstrung?

The Witness: Yes, sir.

Q. How are these beads used? A. They are being used for embroidering purposes and for fancy work.

Q. Well, embroidering and fancy work of what kind? A. For purses and so forth, the beads are taken off the string and they are put on other strings, silk mostly, or some other strings, and are used for manufacturing purposes mostly.

Q. Have they any use in the condition in which they are imported? A. None whatever.

Q. Are the beads, in their present condition, a finished article of commerce? A. No, sir, they are not.

Q. What are they? A. Why, they are nothing but beads, to be unstrung and unthreaded and used, as I stated before, for the manufacturing of other goods.

Q. Are they, in their present condition, a crude material for that purpose? A. Why, yes, sir; in that respect they are the foundation of the goods, the manufacturing of other goods.

Q. Could they be put to any purpose in their present state? A. None whatever.

Q. How are they bought and sold? A. They are bought as steel beads and sold as such.

Q. I mean are they sold by the number of strands or by the number of beads, or by weight, or how are they sold? A. They are sold by the masse, so many masses.

Q. And this is a masse? A. Yes, that we call a masse.

Q. What is the character of the string on which they are threaded? A. It is a cheap cotton string that all these beads are put on.

Q. Is it weak or strong? A. Oh, it is a weak string.

Q. Is the string of any value, except for the purpose of packing the beads in this way A. No, sir.

Q. Do you know what becomes of the strings on which they are threaded? A. Thrown away.

Q. Does the stringing of the beads in this form add anything to their cost or value? A. No, sir.

Q. Or does it change the character or the name or the use of these beads? A. No, sir.

Cross-examination by Mr. Washburne:

Q. You are a dealer in fancy goods, are you? A. Yes, sir.

Q. And you sell these beads by the retail, don't you? A. No, we sell them wholesale.

Q. To what wholesale dealers do you sell them? A. To manufacturers a good deal, to fancy goods stores.

Q. How long have you been selling them to manufacturers? A. Oh, since I have been in business.

Q. That is to say for eleven years? A. Yes, more or less.

Q. And have you been selling them to fancy

goods dealers during the same time? A. Yes, sir.

Q. By the way, are you the witness described as E. F. Buettner, who testified in a similar case on June 20, 1902? A. I presume so.

Q. Do you recall testifying upon that occasion that you did not sell them to manufacturers? A. No, I do not recall that at all.

Q. Let me refresh your recollection: Testimony taken on June 20, 1902, before William B. Howell, from the Board of United States General Appraisers, in Suit No. 960, United States Circuit Court of Appeals, United States of America vs. T. Buettner & Company, there appears this question and answer: "You do not sell them to any manufacturer? A. No, sir. Q. You sell them only to retailers? A. Yes, sir." Do you recollect those questions and answers? A. I do not recollect them.

Q. As made by your counsel, Mr. Brace? A. I do not recall the questions. I will say this, that we sell them mostly or a great deal of late to the retail trade; and, formerly, we sold them more to the manufacturers. I may have had that in view when I said that. There is no reason why I should say no, because we have been selling importations outright to the manufacturers. While more lately they are not used so much by the manufacturers, we have been selling them some to the manufacturers. We sell them now in smaller quantities, perhaps, than a year or so ago. When those bead purses were being made we sold a good deal to the manufacturers.

Q. To what manufacturers have you sold them within the last year? A. Oh, we have sold them to most every manufacturer around town.

Q. Give us one or two names? A. There have been manufacturers coming to our place, small manu-

facturers—and they have bought the goods. You must understand that these bead purses that were sold at a very cheap price were all made by small manufacturers, and they came to our place and paid cash for whatever they have bought, and they were using these for manufacturing those purses.

Q. That is not my question, Mr. Buettner, do you recall the names? A. We turned out a good many of these purses that they made.

Q. Don't you recall the name of any manufacturer? A. No, I do not, I might be able to get you some if you want.

Q. It is true, is it not, that this is the only variety of beads in which you deal? A. No, I said in other beads, too.

Q. What other variety of beads besides the beads in suit do you deal in? A. Why, for the present we deal in so-called Indian beads.

Q. What are they, Mr. Buettner? A. They are made of glass instead of steel, they are made in Italy.

Q. Similar in other respects? A. Why, they are similar to these.

Q. Are they strung on some kind of cheap cotton thread? A. Yes.

Q. How long have you been dealing in those? A. About four months.

Q. Just four months? A. Four months, just about four months.

Q. Prior to four months ago did you deal in both of these? A. Yes, sir.

Q. So that when you testified in 1902 that you dealt only in beads of this character, that was strictly true at that time? A. Yes.

Q. Then excepting these beads in suit and the Indiana beads to which we have just referred, you

deal in no other variety of beads? A. Why, yes, there is another, no, you cannot call them beads, that is about all.

Q. And the steel beads in which you deal are exclusively of this character? A. Yes.

Q. Of this size? A. Yes, sir.

Q. And imported in this manner? A. Yes, sir.

Q. And you have a large trade for them at retail, have you? A. Yes, sir.

Q. Now, where do you buy these beads? A. We buy them in Paris.

Q. You sell them as steel beads? A. Yes, sir.

Q. And you sell them as steel beads here, do you? A. Yes, sir.

Q. Why do you say they are known throughout the country as steel beads, unstrung, commercially? A. Because they are known as such.

Q. But you never sell them in that way, do you? A. Why, how do you mean, we do not sell them as such.

Q. You tell me you buy them and sell them as steel beads, and your testimony was to Mr. Brace that they are known throughout the country commercially as steel beads unstrung. I am asking you why you say that they are known throughout the country commercially as steel beads unstrung? A. Because if a man would come to me and ask for unstrung beads, I would offer him these.

Q. As a matter of fact though, they would come to you and ask for steel beads? A. Yes, sir, mostly they say they want steel beads.

Q. They say mostly they want steel beads? A. Yes.

Q. So, as a matter of fact, these are not generally known as steel beads unstrung? A. Why, every-

body knows they are such, but in asking for them the word "unstrung" is not used in all cases.

Q. You do not know what strung beads are, do you, whether there are any articles known to the trade as strung beads? A. Yes, sir.

Q. Do you know what they are? A. Yes.

Q. How long have you known what they are?

Mr. Brace: Objected to as not cross-examination. Counsel must make the witness his own witness on that, as there was no direct-examination on it. I have not asked him a word about strung beads.

The Commissioner: I think he can answer that; it is in the inquiry, I think that falls within the inquiry.

Mr. Brace: As cross-examination, I object to it on the ground that it is not cross-examination.

The Commissioner: Note an exception.

Q. There are no articles known as strung beads? A. Yes.

Q. How long have you known what they are? A. Well, only for about three or four months.

Q. Do you deal in those? A. Yes, sir.

Q. How long did you say that these have been known commercially as steel beads unstrung? A. Ever since I knew them.

Q. For how many years did you say? A. Fifteen.

Q. When you say that the cotton thread adds nothing to the cost, what do you mean, Mr. Buettner? A. I do not know as I can answer that question. The cotton thread is of no value whatever, and I never knew, have known, of any manufacturer to ask anything for the cotton thread.

Q. You mean the intrinsic value of the thread is practically nothing, is that your idea? A. Yes.

Q. These beads as imported are assorted as to size, there is one size there? A. That is the size, it is all one.

Q. How do you mean as to the size, there is one size there? A. But no assortment.

Q. Is it not true that beads are assorted into different sizes before being put up in this way? Or don't you know anything about that? A. I am not quite sure about it, yes I think I do.

Q. Do you know about it? A. Now, I do not understand exactly your question. Beads of this kind that you have there, there is only one size; there is no reason for sorting those.

Q. You mean that you import only one size; that is right, isn't it? A. No, I import more than one size.

Q. What size is this? A. No. 9.

Q. What are the other sizes you import? A. 8 and 10.

Q. Do you know, or don't you know that beads of this character are assorted before they are strung? A. Well, they are not. the three sizes are not made at the same time.

Q. Do you know that? A. Yes, I know that.

Q. How? A. Because I have been told.

Q. By who? A. By the manufacturer.

Redirect-examination by Mr. Brace:

Q. Do you know how they are manufactured, whether by hand or by machinery? A. As far as I recall the manufacturer told me that the beads are put in—

Mr. Washburne objected to.

Q. Do you know of your own knowledge, have

you ever seen them manufactured? A. No, I have never seen them manufactured.

Q. Do you know of any other importers of these beads? A. I believe there are a good many houses in Chicago; Marshall Field and others.

Q. You do not know the names of them? A. No, I do not.

Q. Do you know to whom these retailers sell them? A. Yes.

Q. Who? A. They sell them to women who do fancy work.

Recross-examination by Mr. Washburne:

Q. Is your house a wholesale house? A. Yes.

Q. Do you have a retail department? A. No, sir.

JOHN P. MANN, a witness produced on the part of the appellant, having been first duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. State your full name? A. John P. Mann.

Q. In what business are you engaged? A. I am at the present time jobbing and importing in Chicago and also have a retail store in Nebraska.

Q. What is the name of your house? A. Morris, Mann & Reilly in the city.

Q. What goods do you handle? A. We handle dry goods, fancy goods, combs, department store jewelry, and beads extensively.

Q. You deal in beads, you say? A. Yes.

Q. And articles made of beads? A. Yes, sir.

Q. Have you seen this sample of beads produced in this case? A. Only as I have seen them on the table while sitting in the room.

Q. Please look at them. (Witness does so.) Please state if you can how these beads are commercially designated. A. As steel beads.

Mr. Washburne: That presupposes that they have a commercial designation.

Q. Have they a commercial designation? A. That is the way I understad they are always bought and sold in the trade.

Q. That is the way they are designated in the trade? A. Yes, sir, that is the trade designation.

Q. Would you call that an article of beads?

Mr. Washburne: That is a question of law.

Q. (Continuing.) An article manufactured from beads? A. No, sir, that is not an article manufactured from beads.

Mr. Washburne: I object to that and move to strike it out on the ground that it is a question of law for the Court.

The Commissioner: How long have you been in this business?

The Witness: Twenty years.

The Commissioner: Handling this kind of goods?

The Witness: Yes, sir.

The Commissioner: Let it stand.

Q. Do you know the manner in which these are threaded? A. No, sir.

Q. Do you know upon what they are threaded? A. Well, this appears to be cotton string, sometimes—now I cannot say whether they are strung sometimes on silk or not; I have seen them with a silk tassel from this thread (indicating).

Q. Do you know for what purpose they are strung this way? A. Yes, sir.

Q. Please state? A. For the purpose of handling, buying and selling them.

Q. And transporting? A. Yes, sir.

Q. And for no other purpose? A. Not that I know of from my experience.

Q. Have they any use in their now condition? A. No, they haven't any more than if they were in a box or an envelope.

Q. Does the threading of them in that manner add to their cost or value? A. It may to their cost, but it adds nothing to their value.

Q. If a customer should ask you for strung beads would you show him those articles, understand he wanted those? (Indicating Exhibit A.) A. No, sir.

Q. What do you understand by strung beads? A. It is a term we do not often hear. If a customer asked me for strung beads, I would show him some beads strung ready for wearing.

Q. In the form of a necklace? A. In the form of a necklace or chain.

Q. Or made up in some proper article?

Mr. Washburne: Objected to as leading.

The Commissioner: Let the witness testify.

Mr. Brace: That is all.

Cross-examination by Mr. Washburne:

Q. Mr. Mann, do you deal in this particular variety of beads? A. Yes, sir.

Q. How long have you handled them? A. Oh, as far back as twenty years.

Q. Have they always been imported in this shape? A. I never imported any.

Q. You never imported any? A. No, sir.

Q. Where do you get them? A. Well, we buy them at the present time from importers.

Q. You buy them from importers? A. Yes, sir, we are using them in manufacturing at present.

Q. Do you buy them from Mr. Buettner? A. No, we never bought them from Mr. Buettner.

Q. For what manufacturing purposes do you use them? A. We are using them on belts and shopping bags.

Q. Do you buy them in large quantities? A. Well, yes, or probably buy Two hundred or Three hundred dollars worth at a time.

Q. How often? A. Well, not very often, because we have not been using them, we only started to apply them in manufacturing in the last two or three months.

Q. Well, prior to the last two or three months, when did you buy them, if at all? A. Yes, sir, we bought them a great many years ago.

Q. How many years ago? A. Oh, ten, fifteen or twenty years ago, in the retail business.

Q. Did you buy them right up to two or three months ago for the retail business? A. Yes, sir.

Q. Always going to your jobbers? A. Always going to the jobbers and importers.

Q. You buy them according to size, do you? A. Yes, sir.

Q. So buying them from manufacturers or rather from the importers and jobbers, you do not know how they are put up or anything about it, do you? A. Nothing more that I have handled them in that shape.

Q. You buy them and you sell them as steel beads, do you? A. We buy them at present and we use them.

Q. Yes, but you know them as steel beads, do you? A. Yes, sir. We also sell them; we also job them.

Q. And you never think of using the term "strung" or "unstrung" do you? A. No, sir.

Q. As a matter of fact, you just say "steel beads?" A. I just say "steel beads."

Redirect-examination by Mr. Brace:

Q. Do you know to whom the retailers sell them? A. To the ladies, to lady customers.

Q. Do you know what use they make of them? A. Well, very similar to the manufacturers; they use them in making purses and apply them on stock collars, decorating stock collars and work of that kind.

Q. Do they wear them in the shape in which those are imported? A. No, sir.

Q. Do they wear strung beads or articles made of beads, the ladies? A. Necklaces or chains, yes, sir.

Q. Is this a crude material from which articles of strung beads are made? A. I hardly think that any of those are strung for the purpose of wearing in the shape of necklaces or chains; they are generally used in the manner more in the nature of embroidering; they are applied as ornamental work on bags or belts.

Q. Are they crude material for making up that work? A. They are.

Q. Would they be commercially designated as "strung" or "unstrung" beads?

Mr. Washburne: Objected to.

The Commissioner: On the ground that the witness is not competent to testify?

Mr. Washburne: On the ground that the

witness is not competent to testify, and has only testified that he has sold this thing at retail for manufacturing purposes less than two months, and there is no testimony, so far as this witness has testified; the facts so far as he has testified, rather, go to show they are simply known as steel beads, and that the question of their being strung or unstrung does not enter into their trade nomenclature.

The Commissioner: The trade designation?

Mr. Brace: I was asking as to the time of importation, which is back some year or so ago.

Mr. Washburne: That is immaterial; he is asking a hypothetical question, would they be known as so and so?

Mr. Brace: I will ask to have the question read.

(Question read.)

The Commissioner: He has testified what they would be known as, that they would be known as steel beads, do you wish to change that?

The Witness: No, sir.

Q. Would they be commercially known as "strung beads?"

Mr. Washburne: Objected to on the ground that the witness has answered.

The Commissioner: The question is answered. I sustain the objection.

(Question read.) A. No.

Recross-examination by Mr. Washburne:

Q. Do you deal in "strung" beads? A. Yes, sir.

Q. What variety of strung beads do you deal in? A. Well, in agates, imitation pearls, wood beads, glass beads.

Q. You are not a jeweler, are you? A. I am not a practical jeweler, I am not a mechanic.

Q. But do you handle gems and necklaces? A. No, we handle necklaces, but not real stones.

Q. I think you testified that you seldom or never have a call for "strung" beads, is that right? A. I do not know whether I testified I did not have, but, however, we do not, they are not spoken of often in that way; but if anybody asked me for strung beads I would understand what they meant.

Q. How are they usually called for, the articles which you call "strung" beads? A. Bead chains.

Mr. Washburne: That is all.

C. KOERNER, a witness produced on the part of the appellant, having first been duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. Please, state your full name? A. C. Koerner.

Q. What is your business? A. I am a salesman and buyer for fancy goods.

Q. In Chicago? A. In Chicago.

Q. With what house are you connected? A. The Nonotuck Silk Company.

Q. Are you familiar with beads? A. With beads, yes, sir.

Q. And articles made of beads? A. Yes, sir.

Q. For what length of time have you been familiar with articles of that kind? A. During the past four years.

Q. Are you familiar with steel beads? A. Yes, sir.

Q. I will ask you to look at the sample of importation in controversy here and state how those beads are commercially designated, if they have a commercial designation.

The Commissioner: First, have they?

The Witness: They have a designation.

Q. They have a commercial designation? If so, what is it? A. I know them as steel beads and sell them as steel beads to my trade.

Q. Are they ever known as strung beads? A. No, they are not.

Q. Are they commercially known as "articles of beads"?

Mr. Washburne: I object to this testimony.

The Witness: I do not understand that.

Mr. Washburne: Counsel for the Government objects to all the testimony in this case as to trade or commercial designation, on the ground that it is immaterial, irrelevant and incompetent, the statute applicable in this case embodying words purely descriptive in character.

Q. Are those designated by the trade as threaded or strung beads?

Mr. Washburne: Same objection.

A. No, they are not.

Q. Do you know for what purpose they are put on the thread? A. For the purpose of convenience in handling, they handle them in that way.

Q. For convenience in transporting and selling?

Mr. Washburne: Counsel for the Government objects to that line of questioning.

A. Yes, sir.

Q. Are they of any value as an article of beads in their present condition?

Mr. Washburne: Objected to as immaterial.

A. No.

Q. Are they in a manufactured condition as they are now? A. No, they are not in a manufactured condition.

Q. What kind of a condition would you call it? A. In a crude condition, an article put on the market to sell and for convenience sake they are threaded as shown here, put in bunches.

Q. Does the threading or stringing add anything to their value? A. Not to my knowledge.

Q. Are they threaded or strung for permanent use in that form? A. This is not permanent.

Q. Do you know what "strung beads" are? A. Yes.

Q. What are they? A. Strung beads, the term "strung beads" is applied to a manufactured article, an article of beads ready to wear.

Cross-examination by Mr. Washburne:

Q. Do you handle this kind of beads? A. Yes, sir.

Q. Does the Nonotuck Silk Company? A. Yes, sir.

Q. Where do you get them? A. Buy them from importers.

Q. You do not import them yourself then? A. No, sir.

Q. Is the Nonotuck Silk Company wholesale or retail? A. Strictly wholesale, a manufacturer of silks.

Q. To what class of trade do you sell these beads? A. To jobbers and manufacturers, to the jobbers we sell ourselves.

Q. Your trade is confined to Illinois, more or less? A. No, sir.

Q. All over the country? A. All over the country.

Q. You buy and sell these as steel beads, do you? A. As steel beads, yes, they are known, they are classified as steel beads.

Q. And the question of their being strung or unstrung is never considered in the trade? A. In what sense do you mean?

Q. They are never ordered as strung or unstrung beads, are they? They are ordered as steel beads? A. Among the customers that we have, that are familiar with these goods, they are better known by the term steel beads, but we have customers that have inquired whether we have that bead strung on silk, or something like it, for sale, but there are not, although our customers would like it, to have them put up that way.

Q. Strung on silk? A. Yes.

Q. You have customers who inquire for these beads strung on silk? A. Yes, sir.

Q. That is what you mean by using the word "strung" in that connection? A. Yes, sir.

Q. You do not know how these are made, or how they are put up, do you? A. No, I am not a manufacturer; we buy them.

Q. But you do not know in what form they are put up by the manufacturer, do you? A. Yes, because they come direct to us as they import them.

Q. You have never seen them manufactured? A. No, sir.

Q. You do not know how they are put up there? A. Yes, I do.

Q. Have you ever been there? A. No, but I know they are put up in masses by the manufacturer of these beads.

Q. But the mechanical way of putting them up you do not know of? A. No.

Q. Perhaps you told me what class of trade they are sold to by your house? A. The fancy goods trade, jobbing trade; we sell them to manufacturers.

Q. Do you handle necklaces and beads that are strung for ornamental purposes? A. No, sir.

Q. You never do anything with those, do you? A. Not in our line of business.

Q. When you say that the stringing adds nothing to the value you mean that the value of the cotton thread is practically nothing, do you? A. Yes, sir.

Q. In that sense it adds nothing to the value of the bead? A. Yes.

Q. Of the bunch? A. Yes, sir.

Q. That is what you meant by that? A. That is my understanding that it does not.

Redirect-examination by Mr. Brace:

Q. You mean it adds no more than any other method of packing might add?

Mr. Washburne: Objected to.

The Commissioner: He has not said that. He said this adds nothing to the selling price of the beads, as I understand.

The Witness: Yes, sir, that is what I said.

The Commissioner: Do you mean to say that there is no other mode of packing that

would add anything to the asking price of the beads?

The Witness: I think if those were packed in boxes, in an elaborate box, it might add to the expense of this bunch of beads if there were packed separately. They have to be sold in quantity or skeins that can be handled by the trade.

The Commissioner: Then your answer to counsel was not as you intended strictly, that this adds no more than any other method of packing. Pay attention to the question, because there might be some distinction.

Q. They have to be packed in some manner? A. Yes, sir.

Q. And any method of packing would cost something, wouldn't it? A. Yes, sir.

Mr. Washburne: I object to the leading character of the question.

The Commissioner: I think that may assumed.

Q. Is this or is it not a cheap method of packing them for the market?

Mr. Washburne: Objected to on the ground that the witness doesn't know anything about packing.

The Commissioner: Are you familiar with any other method of preparing these beads for the market?

The Witness: No, sir, I have never known them to be put up in any other way.

Q. You do not know that there is any other

method that would be cheaper than this or not? A. No, sir.

Recross-examination by Mr. Washburne:

Q. You say you sometimes, Mr. Koerner, have a call for beads strung on silk? A. Yes, sir.

Q. Of this character? A. Yes, sir.

Q. For steel beads strung on silk? A. Yes, sir.

Q. You regard these beads in this sample before you, the official sample, as strung on cotton thread? A. I understand they are not strung in the way they are to be used, they have to be re-strung, to begin with.

Mr. Washburne: That is all.

R. ASMUS, a witness, produced on the part of the appellant, having first been duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. Please state your name, residence and business? A. R. Asmus; residence, Chicago; salesman.

Q. What line of goods are you selling, or what concern are you with? A. With T. Buettner & Co.

Q. Are you familiar with the handling and sale of beads? A. Yes, sir familiar with the sale of them, principally.

Q. Both strung and unstrung beads? A. Yes, sir.

Q. Are you familiar with the beads of which the sample that is in evidence in this case belongs? A. Yes, sir.

Q. Will you please state how these beads are commercially designated, that is, if they have a commercial designation? A. No particular one; they are usually called steel beads.

Q. Are you familiar with the term usually used in the trade in connection with these? A. Not outside of that, no, sir.

Q. Are you familiar with the manner in which they are usually spoken of in the trade, I say? A. Yes, sir.

Q. How broad a territory does your experience cover? A. You mean the territory I travel in?

Q. Yes, that is your whole experience? A. Ten years.

Q. Over what territory? A. Principally Wisconsin, Michigan and part of Minnesota, and the City of Chicago.

Q. Are beads put up in this form ever known to the trade, commercially designated as threaded or strung beads?

> Mr. Washburne: Counsel for the Government objects to all testimony in this case as to trade or commercial designation, on the ground that it is immaterial, irrelevant and incompetent, the statute applicable in this case embodying words purely descriptive in character.

A. No, sir.

Q. Do you know the purpose or object for which they are put up in this shape? A. It is only for convenience. If put up in boxes or papers it would answer the same purpose.

Q. And what is the purpose of this? A. Selling, handling, transporting and so forth.

Q. Do you know the character of the thread in the bundle? A. Cotton, I presume.

Q. Look at it, can you tell? A. Yes, sir, it is cotton.

Q. Is it of a temporary or a permanent nature? A. Temporary.

Q. Is it of any value? A. No, sir.

Q. Does it add anything to the value of the beads? A. No, sir.

Q. Do you know what "strung beads" are? A. Yes.

Q. Well, what are commercially known as strung beads?

Mr. Washburne: Do you deal in strung beads?

The Witness: No, sir.

Mr. Washburne: I object.

Mr. Brace: Does he have to deal in them to be competent to answer that?

The Commissioner: I think you may show what ground he has for his knowledge.

Q. Do you deal in what is known as strung beads? A. I would consider anything—

Q. No, do you personally know what is known as strung beads? A. Yes.

Q. In what manner are you familiar with them? A. Just observed traveling around, seeing other people selling them.

The Commissioner: Have you seen them bought and sold, have you seen strung beads bought and sold?

The Witness: Yes, sir, I have seen other people selling strung beads.

Q. What are they?

Mr. Washburne: Objected to on the ground that the witness has never dealt in strung beads, and his testimony is based on hearsay and observation.

Mr. Brace: Observation is good.

The Commissioner: As a matter of fact, is

your testimony based on what somebody else told you about it?

The Witness: Well, I have seen other people selling them.

The Commissioner: Have you been so intimately connected with the trade who sells them that you would know the designation?

The Witness: I have seen other people selling them, heard them calling for such things.

The Commissioner: Calling for what?

The Witness: For instance "strung beads."

The Commissioner: Now, you propose to describe what you have seen people sell when they have called for "strung beads?"

The Witness: Yes, sir.

The Commissioner: How many times have you seen that?

The Witness: A good many times.

The Commissioner: In what period, would you say?

The Witness: During the period that I have been selling goods during the last eight or nine years.

The Commissioner: He may answer.

(Question read.)

A. "Strung beads" would be beads in the shape of necklaces or something like that, to wear, I would designate as "strung beads."

The Commissioner: If a person called, for instance, for a string of beads, what would that indicate to you?

The Witness: If they came in and asked for a string of beads as they often do, it

would be a chain made up; beads in the shape of a necklace, that is what I would designate as "strung beads."

Q. Would these beads in their present condition be an article of wearing apparel? A. No, sir.

Q. From your experience as a salesman, and your observation, are you able to distinguish between that sample of beads and an article of threaded or strung beads? A. Yes, sir.

Mr. Washburne: Objected to, on the ground that the witness has not testified that there is any difference and this presupposes there is a difference.

The Commissioner: What he would call strung beads. You know what these are in point of fact?

The Witness: Yes, sir.

Q. Are threaded or strung beads articles of wearing apparel?

Mr. Washburne: Objected to as immaterial and irrelevant.

A. I should not consider them so, it depends, as I answered before, in the shape of a necklace I would say yes.

Q. Strung in the form for wearing apparel? A. Strung in the form for wearing apparel, yes, sir.

Mr. Washburne: I object to the question as leading.

Q. Are threaded or strung beads articles of wearing apparel? A. I would consider them so, yes, sir.

The Commissioner: Are these threaded beads?

The Witness: I would not consider them so.

The Commissioner: What is a threaded bead?

The Witness: I answered that.

The Commissioner: Threaded or strung means the same thing to you?

The Witness: Yes, sir.

Q. And that is the meaning of beads strung?

The Commissioner: Ask him what he means?

A. Beads strung when they are in shape for wearing apparel.

Q. Ready for use? A. Yes, sir.

Cross-examination by Mr. Washburne:

Q. How long have you been with the firm of T. Buettner & Company? A. Ten years.

Q. What were you doing before that? A. I was with Marshall Field & Company.

Q. During those ten years you have been out on the road? A. Most of the time.

Q. And the States you have been traveling in are Wisconsin, Michigan and Minnesota? A. Yes, sir; I have traveled some in Iowa, but that is my regular territory.

Q. You are familiar with the sales of T. Buettner & Company? A. Yes, sir.

Q. To what territory are they confined, their sales confined? A. Why, anywhere from Buffalo west to the coast.

Q. To the Pacific Coast? A. Yes, sir.

Q. Have they got agents out on the Pacific Coast? A. No, sir, they have not.

Q. How far west have they got agents or travelers? A. I think Lincoln, Nebraska, would be about as far west as they go.

Q. Now, your trade experience is confined to beads of this character, is it not? A. Yes, sir.

Q. The sample in suit? A. Yes.

Q. You don't know anything about any other kind of beads? A. Excepting Indian beads, we have been handling.

Q. But those only for a short time? A. Only a short time.

Q. These are the only varieties with which you are familiar? A. Yes, sir.

Q. Your testimony is based on your experience with those two varieties? A. Yes, sir.

Q. Now, when you saw customers come in and ask for strung beads, where did they come in and ask for strung beads? A. Where did they come in?

Q. Yes, where have you known of their coming in to stores? A. Where I have been selling goods to people, I know in the retail stores.

Q. In retail dry goods stores? A. In retail dry goods stores, yes, sir.

Q. You do not deal in wearing apparel, do you? A. No, sir, excepting you would call lace collars wearing apparel.

Q. As a matter of fact, those beads are strung on cotton thread, are they not? A. Yes, sir.

Q. Threaded on cotton thread? A. Yes, sir.

Q. So, in point of fact, they are threaded on cheap cotton thread? A. Strung or threaded, yes, sir.

Mr. Washburne: That is all.

The Commissioner: I would like to ask you a question as to the method of handling

and dealing in this particular class of goods. When they come in, they call for steel beads, don't they.

The Witness: They call for steel beads.

The Commissioner: How many steel beads are there in an article like that bunch there?

The Witness: When they call for steel beads, they call for so many "masses."

The Commissioner: This is known as a masse?

The Witness: Yes.

The Commissioner: A masse of steel beads?

The Witness: Yes.

Mr. Washburne: How is that spelled?

The Witness: M-a-s-s-e-s. It is a French word, I believe.

Mr. Washburne: This is known as a masse or masses?

The Witness: Masses is the plural.

The Commissioner: And a masse always contains the same number of beads?

The Witness: I presume it does.

The Commissioner: You do not know.

The Witness: I do not know.

The Commissioner: Approximately the same.

The Witness: Yes. There is a larger size which would weigh more than the smaller one.

The Commissioner: You do not sell them by weight.

The Witness: No, sir, we sell them so much a masse.

Redirect-examination by Mr. Brace:

Q. Are the masses packed in paper boxes? A. No. sir, they come in brown tissue paper, so many of them in a package, one hundred in a package.

Q. How is that package put up? A. Put up in paper, tied with a string.

Mr. Brace: That is all.

Mr. Washburne: That is all. I would like to recall Mr. Buettner just for one question.

E. T. BUETTNER, recalled for further cross-examination by Mr. Washburne on behalf of the Government, testified as follows:

Q. What territory do your sales cover? A. Why, we cover the whole United States, Mr. Washburne.

Q. You have orders from New England and east, do you? A. Not further east than Buffalo, we have had orders from New York City; but I would not say our territory goes further east than Buffalo.

Q. How far West? A. Well, all over the States, West; we have had orders from Skaguay, Alaska.

Q. Pacific coast? A. Pacific coast also.

Mr. Washburne: That is all.

It is stipulated that the testimony of E. F. Buettner, taken June 20, 1902, before William B. Howell, a member of the Board of General Appraisers, may be read into the record from the printed record in the case of the United States of America vs. T. Buettner & Company, Circuit Court of Appeals, Seventh Circuit, No. 960, with the same ef-

fect as if the testimony had been given, as to the contents of Mr. Buettner's deposition on that case.

Said deposition is as follows:

E. F. BUETTNER, a witness produced on the part of the plaintiff, having first been duly sworn, testified as follows:

Direct-examination by Mr. Brace:

Q. Please, state your name? A. E. F. Buettner.

Q. Where do you live, Mr. Buettner? A. Chicago.

Q. What is your business? A. Importer of fancy goods.

Q. Import beads with other articles? A. Yes, sir.

Q. Are you a member of the firm of T. Buettner & Co.? A. Yes, sir.

Q. Are you familiar with the importation which is the subject matter of this controversy? A. Yes, sir.

Q. Will you please state just the condition in which the beads in controversy were imported? A. The beads are strung on a cotton thread, and afterwards they are sold on the cotton thread, and then they are threaded again from that cotton thread onto a silk thread and used in crocheting purses and other articles.

Q. For what purpose are they threaded on those cotton threads? A. For convenience sake.

Q. A convenient method of transportation? A. Yes, sir.

Q. Are they of any use in that condition? A. No, not at all.

Q. Are they used as articles of wearing apparel, or otherwise, in that condition? A. No, sir, they could not be.

Q. Then, as I understand, it is merely a matter of packing? A. That's all.

Q. A convenient manner of packing them for transportation? A. Yes, sir.

Q. In the condition in which they were imported, could they be put to any useful purpose? A. No, sir, they could not.

Q. How are they sold? A. They are sold in the same shape as they are imported.

Q. I mean are they sold by string? A. By the number of strings, by the thousand or the hundred. There are always a hundred strings in a package, and they are sold by the packages.

Q. What is the character of this string on which they are strung? A. It is just a common cotton string.

Q. What is its strength? A. It is very weak.

Q. Would it stand any use? A. No.

Q. Is the string of any value except for the purpose of stringing the beads on it? A. No, sir.

Q. Are these strings of beads what are commercially known as articles? A. No, sir.

Q. How are they commercially known in that condition? A. Well, we simply sell them as steel beads.

Q. As beads? A. Yes, sir.

Q. So that the fact that they are put up as strings do not make them articles of commerce in that condition? A. No, sir.

Q. How are they ordered? A. Just steel beads.

Q. If you get an order for steel beads how would you fill it? A. They are ordered in packages and there are a number of those strings in the package.

Q. But they differ as to size, do they not? A. Yes, there are different sizes, and each size is kept separate.

Q. Do they have a number? A. Yes.

Q. So that if you received an order for steel beads, you would have to have the number to know what the party wanted? A. Yes, the size.

Q. So, that's the way they are ordered? A. Yes.

Q. Do you know what the articles commercially as strung beads are? A. No, I do not know what strung beads are.

Q. Aren't they articles made up, in which the beads are already strung for use, made up into articles for wearing apparel? A. I don't know.

Q. You don't know? A. We don't deal in any beads, except these.

Q. You don't deal in manufactured articles in which beads enter? A. No, sir.

Q. You know that beads are worn by ladies in connection with their wearing apparel, don't you? A. Yes, they are worn, I suppose.

Q. You have seen them on their wearing apparel? A. Yes.

Q. Those are not in the condition that these are imported now? A. These can only be used after they have been re-strung on a stronger thread.

Appraiser: What do you say your business is?

A. Importer of fancy goods, linens, etc.

Q. And how do you come to import beads? A. Because the ladies now wear these crocheted purses, and these use these beads and string them on a silk thread, and crochet them into purses.

Q. And so you sell them at retail? A. Yes, and they re-string them and make these purses.

Q. You don't sell them to any manufacturer? A. No, sir.

Q. You sell them only to retailers? A. Yes, sir.

Mr. Brace: These are the beads that they use in making up these bead purses?

A. Yes, sir.

Q. Now commercially, would they be known as unstrung beads? A. Yes.

Q. They are only ordered as beads; they are not commercially known as string beads? A. No.

Q. And would not beads which are commercially known as strung beads be ones that were received for use in their then condition? A. I presume so.

The District Attorney objects to the question and the objection is sustained.

Cross-examination by O. E. Pagin:

Q. Of what material are all the beads, subject to this importation, composed? A. They are composed of steel.

Redirect-examination by Mr. Brace:

Q. I will call your attention, Mr. Witness, to this exhibit, marked "D 18," I will ask you what that is? A. That shows how the bead is used; the bead is strung on to a silk thread, and part of it is crocheted. This is just the way that the ladies use them to make the purses.

Q. This is not in the condition in which it was imported? A. No, sir.

Q. Have you samples of these beads in the form in which they are imported? A. Yes, sir.

Q. Those are samples, are they? A. Yes, sir.

Mr. Brace: We offer them in evidence.

Mr. Washburne: The Government rests.

Witness my hand.

BYRON S. WAITE,
Member of the Board of United States General Appraisers, acting as an officer of the Court.

Bunch of beads hereto attached, marked Ex. A. Oct., 1. 1903; not reproduced here.

Endorsed: Filed Oct. 17, 1903, Marshall E. Sampsell, Clerk.

[1055]